

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6328

KEITH S. DAVIS,

Petitioner - Appellant,

versus

GENE M. JOHNSON,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (CA-03-450-2)

Submitted: June 23, 2004

Decided: July 1, 2004

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Keith S. Davis, Appellant Pro Se. Steven Andrew Witmer, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Keith S. Davis, a state prisoner, seeks to appeal from a magistrate judge's report and recommendation to deny his petition for habeas corpus relief under 28 U.S.C. § 2254 (2000). We dismiss the appeal for lack of jurisdiction because the magistrate judge's report is not appealable. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders. 28 U.S.C. § 1292 (2000); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The report here appealed is neither a final order nor an appealable interlocutory or collateral order.*

We dismiss the appeal as interlocutory. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

*Nor can we construe the notice of appeal as applicable to the district court's subsequent final order, as the notice does not comply with the content requirements of Fed. R. App. P. 3(c), or the time requirements of Fed. R. App. P. 4(a), as to that order.